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FILE NO: 99997.032244

**VIA ECF AND ELECTRONIC MAIL**

Honorable Stuart M. Bernstein  
United States Bankruptcy Court  
for the Southern District of New York  
One Bowling Green  
New York, New York 10004-1408

Re: *Picard v. Edward A. Zraick Jr., et al.* (Adv. Pro. No. 10-05257)

Dear Judge Bernstein:

This firm is counsel to Edward A. Zraick, Jr., Nancy Zraick, Patricia DeLuca, and Karen M. Rich (collectively, the “Defendants”) in connection with the above-referenced adversary proceeding. We write in response to the letters dated July 12 [ECF 54] and July 13, 2016 [ECF 55] submitted by counsel for Irving H. Picard, as trustee (the “Trustee”), through which the Trustee seeks to have the Defendants’ motion for leave to depose Mr. Madoff (the “Motion”) consolidated with similar motions and adjourned until August 31, 2016.

Defendants find the Trustee’s sudden concern regarding the possibility of multiple depositions curious given his efforts to severely limit the scope of permissible inquiry in Mr. Madoff’s previous deposition. *See* Trustee Objection [Adv Pro 08-01789, ECF 12892] (“If the deposition is authorized, its scope should be strictly limited to profit withdrawal issues”); *see also* 4/23/16 Transcript [Adv Pro 08-01789, ECF 12986] at p.77.

In any event, while couched as a desire to adjourn for purposes of “minimizing the burden on the Court,” the Trustee’s request is merely a thinly veiled attempt to prevent discovery of relevant facts by delaying adjudication of the Motion until after the fact discovery deadline has passed. The Trustee conveniently seeks to adjourn the Motion until August 31, five days *after* the current fact discovery deadline of August 26, while at the same time refusing Defendants’ request (their first) to extend the fact discovery deadline to permit such depositions. The Court should not allow the Trustee to game the discovery and briefing schedules. Defendants already have offered to coordinate with counsel for other defendants in deposing Mr. Madoff so as to avoid duplicative questioning, and do not oppose joining the Motion with the motion for leave to depose Mr. Madoff scheduled for hearing on July 27,



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2016 [Adv. Pro. 08-01789, DN 13603]. However, Defendants strongly object to any adjournment as it is clearly aimed at obstructing the Defendants' ability to conduct discovery.

Given the Trustee's strategy to preclude fact discovery by way of delay, Defendants' Motion will include a request to extend fact discovery from the current deadline of August 26, to and including November 30. The circumstances easily warrant such an extension. Coordination with other counsel (as requested by the Trustee), as well as with the Federal Bureau of Prisons, in order to conduct the deposition of Mr. Madoff (and any former employees Mr. Madoff may identify) will take time. This is Defendants' first request to extend fact discovery, and extension of the deadline will not delay overall adjudication of the adversary proceeding because under the current case management order expert discovery continues until January 16, 2017.

Contrary to the Trustee's position that leave to depose should have been requested earlier, Defendants' counsel has been diligently reviewing documents produced by the Trustee in order to allow for informed depositions. However, the documents produced are extremely voluminous, and Defendants are simultaneously litigating a related appeal before the Second Circuit. *See In re Bernard L. Madoff Inv. Sec. LLC*, Case No. 16-413 (2d Cir 2016). Further, over the course of discovery it has become evident that the Trustee will rely extensively, perhaps exclusively, on decades' worth of BLMIS records, giving rise to the need to depose those with knowledge regarding those records.

For the reasons set forth above and in our July 11 letter, Defendants respectfully request (a) leave to file a motion for leave to depose Mr. Madoff returnable on July 27, 2016, and (b) extension of the fact discovery from August 26, 2016 to and including November 30, 2016.

Respectfully submitted,

A handwritten signature in blue ink that appears to read "Robert A. Rich".

Robert A. Rich

cc: Maximillian S. Shifrin, Esq. (BakerHostetler)  
Nicholas J. Cremona, Esq. (BakerHostetler)  
Helen Davis Chaitman (Chaitman LLP)

(via ECF and Electronic Mail)